



U.S. Department of Justice

Criminal Division

Appellate Section

Washington, D.C. 20530

January 15, 2025

Hon. Molly C. Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
James R. Browning Courthouse
95 7th Street
San Francisco, CA 94103

Re: *United States v. Steven Duarte*, No. 22-50048
Argued December 11, 2024

Dear Ms. Dwyer:

Duarte has called this Court's attention to *Range v. Attorney General*, --- F.4th ---, 2024 WL 5199447 (3d Cir. 2024) (en banc), which held that 18 U.S.C. § 922(g)(1) was unconstitutional as applied to a civil plaintiff.

Range's holding is incorrect, and it conflicts with decisions from other circuits that have held that § 922(g)(1) is constitutional in all its applications. *See, e.g., United States v. Jackson*, 110 F.4th 1120, 1125-29 (8th Cir. 2024); *United States v. Hunt*, 123 F.4th 697, 702-08 (4th Cir. 2024). But even assuming § 922(g)(1) might be unconstitutional in some applications, *Range* would not support Duarte's challenge to § 922(g)(1). Indeed, his challenge would fail even in the Third Circuit.

Duarte's case differs from *Range* in important ways. First, Duarte failed to preserve his Second Amendment challenge below, and he cannot establish plain error. *Compare United States v. Dorsey*, 105 F.4th 526 (3d Cir. 2024) (finding no plain error in § 922(g)(1)'s application to a defendant with a prior conviction for unlicensed carry).

Second, the decision in *Range* was a "narrow one," involving a civil plaintiff with a twenty-year-old conviction for understating his income on a food stamps

application. *Range*, 2024 WL 5199447, at *8. Duarte, by contrast, was prosecuted for knowingly violating § 922(g)(1) despite his five felony convictions, including possession of cocaine base for sale and firearm possession by a felon. *See* Gov’t Ans. Br. 6. And whereas *Range* found “no evidence” that the plaintiff “pose[d] a physical danger to others,” *Range*, 2024 WL 5199447, at *8, Duarte’s prior convictions are indicative of dangerousness, *see Folajtar v. Attorney General*, 980 F.3d 897, 924 (3d Cir. 2020) (Bibas, J., dissenting) (observing that crimes like drug dealing “are dangerous because they often lead to violence”).

Third, Duarte was on post-release community supervision at the time of his offense. PSR ¶ 38. And the Third Circuit has upheld § 922(g)(1) as applied to a defendant on supervision. *United States v. Moore*, 111 F.4th 266, 273 (3d Cir. 2024). Thus, even if *Range* were correct, it would provide Duarte no help.

Respectfully submitted,

s/William A. Glaser

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